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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 3391 of 2006

Date of decision: 22.8.2007

Ram Kumar **...Petitioner**

Versus

Lila Wati and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr.Vijay Sharma, Advocate for the petitioner.
None for the respondents.

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RAJESH BINDAL, J.

Challenge in the present revision petition, filed under Article 227 of the Constitution of India, is to order dated March 21, 2006 passed by the Civil Judge (Junior Division), Patiala whereby application of the petitioner, under Order 1 Rule 10 of the Code of Civil Procedure for impleading him as one of the respondent in the suit, was dismissed.

Briefly, the facts are that a suit was filed by respondents no.1 to 3 against one Raj Kumar for possession by way of redemption of two shops measuring 47 sq. yards situated in ward No.5, Sadar Bazar, Sanaur, Tehsil and Distt. Patiala, which according to the plaintiffs/respondents no.1 to 3, was mortgaged for an amount of Rs. 5000/- with one Raj Kumar defendant in the suit. Defendant in the suit/respondent no.5 in the revision petition Raj Kumar filed reply to the suit stating therein that he had no concern whatsoever with the property in dispute. The same was never mortgaged with him rather he submitted that infact the shops in dispute are in possession of present petitioners as descends of Atma Ram son of Nihala Ram, who was in possession of the shops since long. It was at that time that

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petitioner came in knowledge of the factum of the suit having been filed regarding the property in dispute, possession thereof is with the present petitioner. As the prayer made in the suit is for possession and the present petitioner claims himself to be in possession of the property, he moved an application under Order I Rule 10 of Code of Civil Procedure for impleading him as party respondent in the suit. The same having been rejected, petitioner is before this Court.

Learned counsel for the petitioner submitted that he is proper as well as necessary party in the suit as the suit for possession filed against Raj Kumar on the basis of alleged mortgage is misconceived in the absence of the present petitioner, who is in possession of the shops. His non-impleading in the present suit will unnecessarily complicate the issue and lead to multiplicity of litigation. To substantiate his claim regarding possession of the shops, he submitted that he had placed on record receipts for payment of electricity dues where the power connection is in his name and also a licence under the Prevention of Food Adulteration Act, 1954 for sale of kiryana articles. He further relied on the judgment of this Court in Krishan Lal Vs. Sudesh Kumari 1998(3) Civil Court Cases 136 (P&H). Learned counsel for the petitioner submits that to avoid multiplicity of the litigation the petitioner being necessary party may be permitted to be added in the suit.

Despite service no one had appeared on behalf of respondents.

A perusal of the plaint, annexed with the present petition, shows that the claim made therein is for possession by way of redemption of mortgage against the defendant. No relief whatsoever has been sought against the present petitioner. The petitioner is basing his claim only on the basis of an averment made by the respondents in the suit to the effect that the shops in question are in possession of the petitioner, which came to him from his ancestors. In the application filed under Order I Rule 10 of the Code of Civil Procedure, the petitioner claimed that shops in question were taken on rent by one Atma Ram grand father of the petitioner about 50 years ago and consequently they are in his possession. In totality of

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circumstances, it is evident that claim of the respondents in the suit filed by them for redemption of mortgage and claim made by the present petitioner in application under Order I Rule 10 of Code of Civil Procedure, pleading himself to be tenant in the shops in question, are quite different. The petitioner cannot compel the plaintiff/respondents to change the nature of their suit as the plaintiff/respondents have not claimed any relief whatsoever against the present petitioner. Hon'ble the Supreme Court in a recent judgment reported as **J. J. Lal Pvt. Ltd. and others Vs. M.R.Murali and another**, **AIR 2002 Supreme Court, 1061** has held as under:-

> "Both the sets of applications raise such controversies as are beyond the scope of these proceedings. This is a simple land-lord-tenant suit. The relationship of Municipal Corporation, with the respondents and their mutual rights and obligations are not germane to the present proceedings. Similarly, the question of title between Hemlata Mohan and the respondents cannot be decided in these proceedings. The impleadment of any of the applicants would change the complexion of litigation and raise such controversies as are beyond the scope of this litigation. The presence of either of the applicants is neither necessary for the decision of the question involved in these proceedings nor their presence is necessary to enable the Court effectually and completely to adjudicate upon and settle the questions involved in these proceedings. They are neither necessary nor proper parties. Any decision in these proceedings would govern and bind the parties herein. Each of the two applicants is free to establish its own claims and title whatever it may be in any independent proceedings before a competent forum. The applications for impleadment are dismissed."

The following observations of Hon'ble the Supreme Court in **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and others (1992) 2 Supreme Court Cases 524** are also relevant

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on the issue as to whether merely to prevent multiplicity of litigation, the application under Order I Rule 10 of the Code of Civil Procedure should be allowed.

> "The object of Rule 10(2) of Order 1 is not to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party."

If the pronunciation of law is applied in the facts and circumstances of the present case, it is found that with the impleadment of petitioner as defendant in the suit, the entire nature and complexion of the suit will be changed. Any decision taken by the Court in the suit will only govern the parties therein.

Accordingly, I do not find any merit in the present petition and while upholding the order passed by learned Court below dismiss the revision petition.

August 22 , 2007 **(Rajesh Bindal)**
Pka **Judge**